Hong Leong Finance Bhd v Staghorn Sdn Bhd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO B-02-132-1995
ZAKARIA YATIM, NH CHAN AND MAHADEV SHANKAR JJCA
13 JULY 1995

***Civil Procedure** — Parties — Intervention — Proceedings for order for sale — Land sold in auction — Certificate of sale issued to buyer — Whether could intervene at this stage — National Land Code 1965 s 259(3)(a) — Rules of the High Court 1980 O 15 r 6(1) & O 83*

The appellant ('Hong Leong Finance') had applied to the High Court by originating summons for an order for sale of a piece of land under O 83 of the Rules of the High Court 1980 ('the RHC'), based on a lien-holder's caveat under s 281 of the National Land Code1965 ('the NLC'). The High Court granted the order for sale, and the land was sold to a successful bidder who paid the full purchase price for it at a public auction. A certificate of sale was then issued in accordance with s 259(3)(a) of the NLC by the High Court's registrar. Almost two years later, the respondent ('Staghorn') filed an application in the High Court, inter alia, for leave to intervene in the proceedings and set aside the sale. The High Court granted Staghorn leave to intervene. Dissatisfied, Hong Leong Finance filed an appeal against the order of the judge. The issue before the court was whether Staghorn was able to intervene after the certificate of sale had been issued to the bidder.

Held, allowing the appeal:

(1) From the opening words of O 15 r 6(2), it will be seen that the order to add, join or intervene in the proceedings can be made 'at any stage of the proceedings in any cause or matter'. The question for determination, therefore, was whether there were any proceedings in existence when the order for intervention or the application seeking intervention was made.

(2) The issuance of the certificate of sale by the High Court registrar pursuant to s 259(3)(a) of the NLC was the final stage of the proceedings for an order for sale under O 83 of the RHC. There were no proceedings in existence after that. Hence, it follows that the order for intervention and the summons for leave to intervene had not been made or issued 'at any stage of the proceedings' as required by O 15 r 6(2).

[Bahasa Malaysia summary

Perayu ('Hong Leong Finance') telah memohon kepada Mahkamah Tinggi melalui saman pemula untuk suatu perintah jualan sebidang tanah di bawah A 83 Kaedah-Kaedah Mahkamah Tinggi 1980

('KMT') berdasarkan suatu kaveat pemegang lien di bawah s 281 Kanun Tanah Negara 1965 ('KTN'). Mahkamah Tinggi membenarkan perintah jualan, dan tanah tersebut telah dijual kepada seorang pembuat tawaran yang berjaya, yang telah membayar harga belian penuh baginya di jualan lelong awam. Suatu perakuan jualan telah dikeluarkan kemudiannya mengikut s 259(3)(a) KTN oleh pendaftar Mahkamah Tinggi. Hampir dua tahun selepas itu, responden ('Staghorn') telah memfailkan suatu permohonan di Mahkamah Tinggi, antara lain, untuk kebenaran untuk mencelah di dalam prosiding tersebut dan mengenepikan jualan itu. Mahkamah Tinggi telah memberikan Staghorn kebenaran untuk mencelah. Tidak berpuas hati dengan keputusan itu, Hong Leong Finance memfailkan suatu rayuan terhadap perintah hakim tersebut. Isu yang harus dipertimbangkan oleh mahkamah ialah sama ada Staghorn boleh mencelah selepas perakuan jualan telah dikeluarkan kepada pembuat tawaran tersebut atau tidak.

Diputuskan, membenarkan rayuan tersebut:

(1) Daripada perkataan-perkataan pembukaan A 15 k 6(2), perintah untuk menambah, mencantum atau mencelah di dalam prosiding boleh dibuat 'pada sebarang peringkat prosiding di dalam sebarang kausa atau perkara'. Oleh itu, soalan untuk diputuskan adalah sama ada terdapat sebarang prosiding yang masih wujud apabila perintah untuk mencelah atau permohonan untuk mencelah itu dibuat.

(2) Pengeluaran perakuan jualan oleh pendaftar Mahkamah Tinggi menurut s 259(3)(a) KTN adalah peringkat terakhir di dalam prosiding untuk mendapatkan perintah jualan di bawah A 83 KMT. Tidak ada prosiding yang masih wujud selepas itu. Ekoran itu, perintah pencelahan dan saman untuk kebenaran untuk mencelah tidak dibuat atau dikeluarkan 'pada sebarang peringkat prosiding' sepertimana yang disyaratkan oleh A 15 k 6(2).]

[*Editorial Note*: The respondent has filed an application for leave to appeal to the Federal Court vide Notice of Motion No 08–42 of 95.]

Notes

For cases on intervention of proceedings, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2402–2414.

Case referred to

Duke of Buccleuch, The [1892] P 201 (folld)

Legislation referred to

National Land Code 1965 ss 259(3), 281
Rules of the High Court 1980 O 15 r 6(2)(b), O 83

A Rules of the Supreme Court 1883 O 16 [Eng]
Rules of the Supreme Court 1965 O 15 [Eng]

Appeal from: Originating Summons No 24–391–90 (High Court, Shah Alam)

B *Robert Lazar* (*Jeyanthini Kannaperan* with him) (*Shearn Delamore & Co*) for the appellants.
Yusuf Khan (*KL Wong* with him) (*KL Wong & Lim*) for the respondent.

Cur Adv Vult

C **NH Chan JCA** (delivering the judgment of the court): This is an appeal by Hong Leong Finance Bhd against the order of the judge allowing the respondent, Staghorn Sdn Bhd, to intervene in the instant proceedings. The appellant had applied by originating summons for an order for sale of
D a piece of land under O 83 of the Rules of the High Court 1980 ('the RHC') based on a lien-holder's caveat under s 281 of the National Land Code 1965 ('the Code'). On 9 August 1991, the High Court granted the order for sale.

On 16 November 1991, at a public auction, the land was sold to the
E successful bidder who paid the full purchase price for it. A certificate of sale was issued in accordance with s 259(3)(a) of the Code on 18 February 1992, by the registrar of the High Court.

On 4 December 1993, Staghorn filed an application for leave to intervene, and for an order to set aside the sale and the order for sale, and
F for other consequential orders.

On 30 January 1995, the High Court granted to Staghorn leave to intervene, and proceeded to hear the rest of the application. On 27 April 1995, the High Court granted Staghorn the substantive reliefs claimed. This appeal concerns the intervention order of 30 January 1995. The
G relevant parts of O 15 r 6(2)(b) of the RHC read:

> At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application —
> ...
> (b) Order any of the following persons to be added as a party, namely —
> (i) any person who ought to have been joined as a party or whose
H presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
> (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter
I which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter;

From the opening words of r 6(2), it will be seen that the order to add, join or intervene in the proceedings can be made 'at any stage of the proceedings in any cause or matter'. The question for determination, therefore, is whether there were any proceedings in existence in this originating summons on 30 January 1995, when the order for intervention was made, or even on 4 December 1993 when the summons seeking intervention was issued.

In *The Duke of Buccleuch* [1892] P 201, an application was made in an admiralty action to substitute the cargo owners for their agents as plaintiffs. The application was made after the trial under the then O 16 (which was the predecessor of the present English O 15 which is similar to our present O 15), which by r 11 of that Order provided for the joinder of fresh parties 'at any stage of the proceedings'. There, Fry LJ, in upholding the judge's decision to allow the substitution said at p 212:

> I base my decision upon the words 'at any stage of the proceedings'. It has been argued that the rules do not apply after final judgment. They apply, in my opinion, as long, as anything remains to be done in the case. In this case there remains the assessment of damages.

We are of the view that after 18 February 1991, when the certificate of sale was issued by the registrar of the High Court, nothing further remained to be done in the proceedings. There were no proceedings in existence after that date. The court would have had no jurisdiction thereafter to make any order under O 15 r 6(2). The proceedings came to an end upon the issuance of the certificate of sale on 18 February 1992, and therefore the order for intervention which was made on 30 January 1995, or the summons for leave to intervene which was filed on 4 December 1993, had not been made or issued 'at any stage of the proceedings' as required by O 15 r 6(2). This is because there was no stage of the proceedings in existence after 18 February 1992 as the issuance of the certificate of sale pursuant to s 259(3)(a) of the Code was the final stage of the proceedings for an order for sale under O 83.

For the reasons which we have stated above, we have allowed the appeal with costs here and in the court below. The order of the High Court granting leave to Staghorn to intervene in these proceedings dated 30 January 1995, is set aside.

Appeal allowed.

Reported by Isabel Liong